



The State of New Hampshire
Department of Environmental Services
Water Council



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STATE OF NEW HAMPSHIRE

WATER COUNCIL

Decision & Order
on Motion for Reconsideration

Docket No. 04-17 WC

Appeal of Save our Groundwater

On January 13, 2005, the Water Council issued its Decision and Order Declining to Accept Appeal of Docket No. 04-17 WC. On February 9, 2005, Save Our Groundwater ("SOG") filed this Motion for Reconsideration. No other interested party to this matter filed an objection or response to the Motion for Reconsideration.

SOG's Motion argues that: its Notice of Appeal followed the legally correct appeal route and that an appeal to the New Hampshire Supreme Court is not required until after the Water Council has considered SOG's appeal; and there is a conflict of interest by Department of Justice Attorneys which interferes with an impartial determination of the issues.

DECISION

Based on the legal analysis included in its January 13th Decision and Order, the Water Council denies the Motion for Reconsideration.

Appeal to the New Hampshire Supreme Court is required under RSA 485-C:21, VI.

Regarding the claim that an appeal to the Water Council is the appropriate appeal, as the Water Council explained in its January 13th Decision and Order, an appeal under RSA 485-C:21, VI, is in accordance with RSA 541 and must be made directly to the New Hampshire Supreme Court. The Water Council reiterates that ruling in this Order.

The Water Council is required to give deference and follow the legal analysis included in the Opinion of the Attorney General, issued September 2, 2004, as this is an official Opinion of the Attorney General. An official Opinion of the Attorney General does not need to be specifically signed by the Attorney General. When the Attorney General issues an official Opinion interpreting New Hampshire law, all executive branch agencies are bound by that Opinion. *See* RSA 7:8; *Opinion of the Justices*, 110 NH 26 (1969).

The Water Council is bound by the September 2, 2004 Opinion in which the Attorney General interprets almost identical language in RSA 483-B to that found in RSA 485-C:21, VI. In that Opinion, the Attorney General states when the statutory language requires that the appeal shall be governed by RSA 541 that means that the aggrieved party must file a motion for rehearing and then an appeal to the New Hampshire Supreme Court. The Water Council's January 13th Decision and Order accordingly declined to accept SOG's Notice of Appeal. The Water Council now denies SOG Motion For Reconsideration on the same basis.

There is no conflict of interest or inappropriate interaction between the different Bureaus and attorneys at the Attorney General's Office.

With respect to the issue of a conflict of interest between the different attorneys located in the different Bureaus of the Attorney General's Office, there is no evidence of any conflict of interest and no additional evidence has been offered in SOG's Motion for Reconsideration. Despite SOG's arguments, RSA 7:8-a, RSA 7:8-b, II, and the cases of *Appeal of Trotzer*, 143 NH 64 (1998) and *Appeal of Roland P. Huston, Jr., D.V.M. (New Hampshire Board of Veterinary Medicine)*, 150 NH 410 (2003), all allow for division of representation of executive branch agencies, boards, and councils by different members of the Attorney General's Office.

All Bureaus and attorneys in the Attorney General's Office are bound by an official Opinion of the Attorney General – just as all executive branch agencies are. As a result, there is no conflict of interest or lack of impartial legal advice to the Water Council based on the Water Council's citation to the Attorney General's September 2, 2004 Opinion.

There never has been any contact between the two Bureaus or between the two attorneys involved from the Attorney General's Office regarding this case. And, there continues to be no contact. The only documents that the Water Council's attorney has reviewed in this matter are the documents that have been part of the official file of the Water Council, including the October 11, 2004 letter from SOG. The Water Council will not consider this issue further.

Order

Motion for Reconsideration is **DENIED**.

Reconsideration

Pursuant to RSA 541:6, within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the Supreme Court.

So Ordered for the Council by: _____

COPY

May 13, 2005

Michael P. Scialfani, Appeals Clerk